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F. # 2005V01179

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ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

**PRELIMINARY ORDER OF  
FORFEITURE**

- against -

CR-03-1368 (S-3) (ARR)

SELWYN SMITH,

Defendant.

X

WHEREAS, in the Superseding Indictment in the above-captioned case, the United States sought forfeiture pursuant to Title 21, United States Code, Section, 853, of any property constituting, or derived from, proceeds obtained, directly or indirectly, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of violations of Title 21, United States Code, Section 963, as alleged in the Superseding Indictment; and

WHEREAS, on March 28, 2005, the defendant, SELWYN SMITH, pled guilty to a violation of Count 1 of the Superseding Indictment, to wit, Title 21, United States Code, Section 963, as alleged in the Superseding Indictment; and

WHEREAS, pursuant to the defendant's cooperation agreement, the defendant agreed and consented to forfeit to the United States all of his right, title and interest in: (i) the sum or \$404,292.00 in United States currency, more or less, and all

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proceeds traceable thereto, seized from 100-47 223<sup>rd</sup> Street, Queens Village, New York; (ii) one Lorcini 0380 caliber pistol with ammunition seized from 100-47 223<sup>rd</sup> Street, Queens Village, New York; and (iii) one Black 2002 BMW X5, VIN 5UXFB93582LN8136 (collectively, the "Forfeited Property").

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

1. Pursuant to Title 21, United States Code, Section 853, the defendant shall forfeit to the United States all of his right, title and interest in the Forfeited Property.

2. Upon entry of this Order, the United States Attorney General, or his designee, is authorized to seize the Forfeited Property and to conduct any discovery necessary to identify or dispose of the Forfeited Property in accordance with Fed. R. Crim. P. 32.2(b)(3).

3. Upon entry of this Order, the United States Attorney General is authorized to commence any applicable proceedings necessary to comply with the statutes governing the rights of third-parties, including giving notice of this Preliminary Order of Forfeiture.

4. The United States shall publish notice of this Preliminary Order of Forfeiture in a newspaper of general circulation in this district, and of its intent to dispose of the

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Forfeited Property in such a manner as the Attorney General or his designee may direct.

5. Any person, other than the defendant, asserting a legal interest in the Forfeited Property must within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier, petition the Court for a hearing, without a jury, to adjudicate the validity of his alleged interest in the Forfeited Property, and for an amendment to this order, pursuant to Fed. R. Crim. P. 32.2(c).

6. Any petition filed by a third-party asserting an interest in the Forfeited Property shall (i) be signed by the petitioner upon penalty of perjury; (ii) set forth the nature and extent of the petitioner's right, title or interest in the Forfeited Property; and (iii) any additional facts supporting the petitioner's claim and relief sought.

7. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in any assets identified and/or seized in accordance with Fed. R. Crim. P. 32.2(e)(1) as a substitute for publishing notice as to those persons so identified.

8. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

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9. At the expiration of the period provided by statute, or, in the event any third-party files a timely claim, upon adjudication of all third-party interests, the Court will enter a Final Order of Forfeiture in which all interests will be addressed.

10. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

11. The Clerk of the Court shall forward eight (8) certified copies of this Order to Assistant U.S. Attorney Brendan G. King, U.S. Attorney's Office, Eastern District of New York, One Pierrepont Plaza, 16<sup>th</sup> Floor, Brooklyn, New York 11201.

Dated: Brooklyn, New York  
August 18, 2005

*[Signature]*  
HONORABLE ALLYN E. ROSS  
UNITED STATES DISTRICT JUDGE